HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 17204 OF 2006

DATED: 23.8.2006

Between:

Ladi Mallikarjuna Rao

… Petitioner

and

The Special Dy. Collector and another

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.17204 OF 2006

ORAL ORDER:

Heard Sri K.V. Subramanya Narasu, learned counsel for the petitioner and the learned Government Pleader for Land Acquisition and with the consent of the parties, the writ petition is disposed of at the stage of admission.

The grievance in the writ petition is that in the notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') published in the Gazette on 22.10.2005, proposing acquisition of an extent of Ac.0.85 cents in Sy.No.69/2 of Hiramandalam village and Mandal, Srikakulam District, owned by the petitioner, the structures in the land are not reflected. According to the petitioner, there is an existing permanent building in the land and despite a pre-acquisition survey the existence of the structure was not reflected either in the survey report or in the proceedings under the Act. The petitioner made representations to the respondents 1 and 2 dated 18.11.2005 and 21.11.2005, complaining that the structures are not reflected in the acquisition proceedings. There being no response, the petitioner filed W.P.No.4636 of 2006; the writ petition was disposed of by the judgment of a learned single Judge dated 13.3.2006 with a direction that the respondents consider and dispose of the petitioner's representations. Thereupon, the 1st respondent communicated an endorsement to the petitioner dated 1.7.2006 stating that as per the Government orders in G.O.Ms.No.127 I & CAD (P.W. Major Irrigation (I) Department) dated 19.7.2005; proceedings of the

District Collector, Srikakulam dated 27.7.2005; and by the time of the survey of the lands on 15.9.2005 for formalizing the draft notification under Section 4 (1) of the Act, there are no constructions in the extent of petitioner's land in Sy.No.69/2 of Hiramandalam village.

Sri K.V. Subramanya Narasu, learned counsel for the petitioner, states that in the context of the denial of the existence of structures by the 1st respondent, the petitioner should be at liberty to urge, assert and claim the existence of structures and seek compensation therefor in the award enquiry and thereafter by seeking reference under Section 18 of the Act, if so warranted, by adducing appropriate oral or documentary evidence as the petitioner desires to marshall in the award enquiry. In the context of the endorsement issued by the 1st respondent dated 1.7.2006 asserting the absence of structures in the lands of the petitioner acquired, there appears a disputed factual situation which is not susceptible to adjudication under Art.226 of the Constitution. The petitioner has an effective alternative and competent remedy, by way of asserting this aspect of his claim in the award enquiry by adducing relevant evidence for the consideration of the officer passing the award and if the grievance persists even after passing of the award, the petitioner has yet another avenue of seeking a reference to the civil court, under Section 18 of the Act.

In the light of the availability of the aforesaid remedies which are alternative and efficacious and more appropriately suited for adjudication of disputed questions of fact, this court is not inclined to adjudicate upon the lis, presented in this writ petition.

The writ petition is accordingly dismissed, with liberty preserved in the petitioner to pursue appropriate remedies under the provisions of the Act, as outlined above. No order as to costs.

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GODA RAGHURAM, J

Date: 23.8.2006
CVM